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THERE are two extreme views of the responsibility of the Spanish Government in the matter of the *Maine* in case the accident-on-board theory proves untenable. The one holds that when a ship of war of one country enters another's port that other *guarantees* its safety from external dangers. The other maintains that under similar circumstances the actual complicity of the government must be proved to attach liability to it. Neither of these views seem to us to be warranted. Examine them a moment. The first view is probably based upon a mistaken understanding of such cases as that of the U. S. privateer *General Armstrong* in the harbor of Fayal in 1814. An English boat expedition tried to cut her out. Her crew defended themselves for a time, then set fire to the ship and took refuge on shore. When claim for her value was made upon Portugal, whose jurisdiction had been violated by the attack, it was contested and finally referred to arbitration. The award declared that protection had been due from the Portuguese Government, but that since the crew had defended itself instead of appealing to the authorities the latter were freed from further responsibility. But to argue that because protection is due in a friendly port against belligerent attack, therefore, protection is *guaranteed* against *all* attack, is to confuse between an act which openly violates neutrality, sovereignty and international law, and an act which may be a skillfully devised and secret evasion of the local police regulations. In the one case the attack is twofold, upon a friend's sovereignty as well as upon an enemy's ship within that friend's jurisdiction. For its own sake as well as for its visitor's sake resistance to open attack is due.

In the other case, with all the good will in the world, and with efficient harbor policing, it may not be possible to stop all secret machinations. Why should a state *guarantee* a degree of protection which neither it nor any other power has the ability to make absolutely effective. It is the duty of the United States to prevent filibustering, but it does not guarantee that it will be invariably successful. It uses those measures which appear adequate for the purpose and denies further responsibility.

Now take the other view, that the Spanish Government has no liability except for the acts of its authorized agents. This is as much too lax a theory as the other is drastic. A government owes good faith, fair treatment, a desire to protect, as well as the mere order that its own servants shall keep their hands off. Its duties are not merely negative. They are positive. Its duty lies partly in controlling other agencies than its own official agencies and a corresponding responsibility attaches. Otherwise through mere negligence a hostile-minded power could accomplish its ends and yet claim exemption from responsibility. A man is responsible for the acts of a savage dog which he owns, even when he does not himself set the animal on. If we pursue this analogy a step farther it will bring us to the middle ground where we conceive the law and justice of this question really lie. Suppose the dog in question is not savage; has never bitten a man before, but being under considerable mental excitement suddenly takes it into his head to commit a breach of the peace. If the animal's master has had no reason to suspect an outbreak we do not blame him for not having chained the dog up. To found a suit for damages negligence must be shown, and a jury will be asked to pass upon the question.

So is it in judging Spain's responsibility for the loss of the *Maine*. Neither an accident on board nor an outside attack resulting from the orders of the government, would present any legal question. Between these limits of undoubted responsibility lies a middle ground. We deny on the one hand that Spain can be held to have guaranteed the safety of the *Maine* within her waters; we deny on the other hand that Spain owed our ship nothing more than the abstention of her own officers from doing it an injury. We assert that the right rule is that Spain owed care and thought and good judgment and the use of her ordinary, or, if necessary, of extraordinary, agencies; in a word, owed *due diligence*, to secure the safety of the visiting man-of-war.

What is due diligence? What sort of diligence was due under the circumstances of this case? Is not this a fair question for a jury for arbitration? But generally speaking, *due* diligence would be that which was proportioned to a reasonable suspicion of risk, and to the results to be looked for from a failure to be diligent.

An illustration will better explain what we mean. The relations between the two countries were somewhat strained when the *Maine* steamed into Havana harbor. There her berth was assigned her by the harbor master. If he was permitted or directed by the officials in charge to place the ship over a mine, thus making the explosion at the hands of some unauthorized, irresponsible fanatic at least possible, it was a failure of *due* diligence. So if the Government became aware of a hostile feeling and movement amongst any class in Havana, directed against the *Maine* or the Americans, it was bound to more than ordinary care to protect it and them. When the *Viscaya* came to our own port during a very excited condition of the public mind and temper a greater degree of diligence was due for her protection than in the case of the *Maine*, and great diligence was shown.

It may well be that the Board of Inquiry will be unable to assign a cause, or fix the blame, for the explosion. In that case, if the principle we have laid down is sound, the Spanish Government can only be held responsible in damages if it be shown to have failed to exhibit due diligence in providing for the *Maine's* safety.

T. S. W.